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2 UNITED STATES DISTRICT COURT  
3 DISTRICT OF NEVADA  
4

5 Arthuro Mehretu,

6 Plaintiff

7 v.

8 Southern Nevada Health District,

9 Defendant.  
10

Case No. 2:21-cv-02004-CDS-NJK

Order Granting Motion to Compel  
Arbitration and Stay Litigation

(ECF No. 11)

11 Pending before the Court is Southern Nevada Health District's ("SNHD") Motion to  
12 Compel Arbitration ("Motion") which was filed on March 14, 2022. ECF No. 11. SNHD contends  
13 both parties consented to a binding arbitration provision as part of an employment contract,  
14 which SNHD now seeks to enforce. Plaintiff Arthuro Mehretu ("Mehretu") filed an opposition  
15 to the motion on March 25, 2022, ECF No. 13, arguing that the Motion should be denied because  
16 the arbitration clause is unconscionable, and because the subject matter of this litigation is a  
17 matter of public concern. SNHD's reply was timely filed on March 30, 2022. ECF No. 14. This  
18 matter was administratively reassigned to me on May 17, 2022. ECF No. 23. Having considered  
19 the moving papers and relevant law, I grant the motion to compel arbitration and stay this case.

20 **I. Relevant Facts**

21 Plaintiff Mehretu filed a complaint on November 4, 2021, alleging five causes of action, all  
22 of which relate to his employment with Southern Nevada Health District. He alleges unlawful  
23 workplace discrimination and retaliation based on race under Title VII of the Civil Rights Act of  
24 1964, 42 U.S.C. §2000e *et seq.*, and Nevada Revised Statute § 613.330 *et seq.*; the deprivation of

rights secured by the Civil Rights Act of 1871, 42 U.S.C. § 1981; intentional infliction of emotional distress; and wrongful termination in violation of public policy. *See generally* ECF No. 1.

In response to Mehretu's suit, the SNHD filed a motion to dismiss (ECF No. 8), which was withdrawn (ECF No. 12) after they filed the instant motion to compel arbitration. ECF No. 11. As set forth in the motion to compel, on November 29, 2010, during the onboarding process as a new employee, Mehretu signed an *Acknowledgement of Receipt and Arbitration Agreement* ("the Agreement") stating in part: "I also acknowledge that the District utilizes a system of alternative dispute resolution that involves binding arbitration to resolve all disputes that may arise of out of the employment context." ECF No. 11-1. The Agreement further states that:

both the District and I agree that any claim, dispute, and/or controversy (including, but not limited to, any claims of discrimination and harassment, whether they based on the Nevada Fair Employment Practices Act, Title VII of the Civil Rights Act of 1964, as amended, as well as all other state and federal laws or regulations) ... shall be submitted to and determined exclusively by binding arbitration under the Federal Arbitration Act...

*Id.* (emphasis added)

SNHD argues that the Agreement is a valid and binding contract, and the dispute between the parties unquestionably arises from and relates to Mehretu's employment with SNHD (ECF No. 11 at 5), therefore Mehretu's claims are arbitrable under the Agreement. SNHD also alleges that because the Agreement allows Mehretu to pursue, and SNHD to defend, all claims in arbitration, the arbitral forum is adequate. *Id.*

Mehretu opposed the motion, contending that the Agreement is procedurally unconscionable as it was placed at the end of Defendant's extensive Personnel Code (ECF No. 13 at 4) thereby making it unlikely that Mehretu understood the gravity of the contract. *Id.* at 5. He also argues that the Agreement is substantively unconscionable because it was not only an agreement to binding arbitration, but also an acknowledgement that Mehretu had received the

1 Personnel Code. *Id.* Mehretu contends that the fact that he was voluntarily relinquishing his  
2 rights to seek relief from the Courts is not clear. *Id.*

3 Lastly, Mehretu argue that the Agreement should be invalidated based on the public  
4 interest in his employment dispute. “Compelling this matter into arbitration would effectively  
5 ensure that the public would never learn the outcome of this matter,” Mehretu argues, thereby  
6 giving SNHD “the opportunity to hide its shocking behavior from the community it serves.” *Id.*  
7 at 6.

8 SNHD replied that Mehretu cannot meet his burden to demonstrate either procedural or  
9 substantive unconscionability, and thus, this Court should enforce the employment agreement  
10 and arbitration clause. ECF No. 14 at 3 (citing *Burch v. Second Jud. Dist. Ct. of State ex rel. Cty. of*  
11 *Washoe*, 118 Nev. 438, 443 (2002); *D.R. Horton, Inc. v. Green*, 120 Nev. 549, 553-54 (2004), *overruled on*  
12 *other grounds by U.S. Home Corp. v. Michael Ballesteros Tr.*, 134 Nev. 180, 192 (2018); *Andrus v. D.R.*  
13 *Horton, Inc.*, 2012 WL 5989646, at \*7 (D. Nev. Nov. 5, 2012) *report and recommendation adopted*, 2012  
14 WL 5989642 (D. Nev. Nov. 29, 2012)). In response to Mehretu’s public interest argument,  
15 SNHD contends that the public’s interest in the employment dispute does not outweigh  
16 enforceability of a binding arbitration agreement. *Id.* at 7-8.

## 17 II. Legal Framework

18 The Federal Arbitration Act (“FAA”), which governs the enforceability of arbitration  
19 agreements in contracts, was enacted by Congress in 1925 to address the perception that courts  
20 were hostile to arbitration. 9 U.S.C. § 1, *et seq.*; *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1621 (2018).  
21 The FAA provides that arbitration agreements “shall be valid, irrevocable, and enforceable, save  
22 upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2.  
23 The Supreme Court has held that the “fundamental principle” of arbitration is application of  
24

1 contract rules. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (citing *Rent-A-Center, West,*  
2 *Inc. v. Jackson*, 561 U.S. 63, 67 (2010)).

3 In deciding whether to compel arbitration, the court may not review the merits of the  
4 dispute; rather, the court’s role under the FAA is limited to “determining (1) whether a valid  
5 agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute  
6 at issue.” *Lowden v. T-Mobile USA, Inc.*, 512 F.3d 1213, 1217 (9th Cir. 2008) (citing *Chiron Corp. v. Ortho*  
7 *Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000); *Cox v. Ocean View Hotel Corp.*, 533 F.3d 1114,  
8 1119 (9th Cir. 2008)). If the Court determines that both questions are answered in the  
9 affirmative, the Court must compel arbitration. *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218  
10 (1985).

11 In determining the validity of an arbitration agreement, the Court applies state law  
12 contract principles. *Adams*, 279 F.3d at 892; *see also* 9 U.S.C. § 2. To be valid, an arbitration  
13 agreement must be in writing, but it need not be signed by the party to whom it applies as  
14 acceptance may be implied in fact. *Pinnacle Museum Tower Ass’n v. Pinnacle Mkt. Dev.*, 55 Cal. 4th 233,  
15 236 (2012). Further, “[a]n arbitration clause within a contract may be binding on a party even if  
16 the party never actually read the clause.” *Id.*

17 The standard for demonstrating arbitrability is not high and enforcement of arbitration  
18 agreements are rigorously enforced. *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 719 (9th Cir. 1999). The  
19 FAA “establishes a federal policy favoring arbitration, requiring that [courts] rigorously enforce  
20 agreements to arbitrate,” *see Shearson/Am. Exp. Inc. v. McMahon*, 482 U.S. 220, 226 (1987), and  
21 provides that if a “contract contains an arbitration clause, there is a presumption of  
22 arbitrability.” *Comedy Club, Inc. v. Improv West Assocs.*, 553 F.3d 1277, 1284 (9th Cir. 2009) (quoting  
23 *AT&T Techs, Inc. v. Commc’ns Workers of Am.*, 475 U.S. 643, 650 (1986)) (internal quotation marks  
24 omitted). “By its terms, the Act ‘leaves no place for the exercise of discretion by a district court,

1 but instead mandates that district courts direct the parties to proceed to arbitration on issues as  
2 to which an arbitration agreement has been signed.” *Chiron Corp. v. Ortho Diagnostic Sys.*, 207 F.3d  
3 1126, 1130 (9th Cir. 2000) (quoting *Dean Witter Reynolds*, 470 U.S. at 218).

4 It is “well settled that [if] the [arbitrability] dispute at issue concerns contract  
5 formation, the dispute is generally for courts to decide.” *Granite Rock Co. v. Int’l Broth. of Teamsters*,  
6 561 U.S. 287, 296 (2010).

### 7 III. Argument

8 Mehretu does not argue that he never read or saw the Agreement, or that he did not  
9 freely sign it. Furthermore, Mehretu does not claim he entered into the Agreement unknowingly  
10 or by mistake. Rather, Mehretu attacks the validity of the agreement by contending that it is  
11 procedurally and substantively unconscionable and that it is void because the arbitration  
12 provision was “not presented to him as a stand-alone contract” and “because it was not only an  
13 agreement to binding arbitration, but also an acknowledgement that the Plaintiff had received  
14 the Personnel Code.” ECF No. 13 at 5

#### 15 a. The Arbitration Agreement is Valid

16 “Generally, both procedural and substantive unconscionability must be present in order  
17 for a court to exercise its discretion to refuse to enforce a clause as unconscionable.” *D.R. Horton v.*  
18 *Green*, 96 P.3d 1159, 1162 (Nev. 2004) (quoting *Burch v. Dist. Ct.*, 49 P.3d 647, 650 (Nev. 2002)).  
19 Procedural unconscionability refers to a party’s unequal bargaining power and  
20 misunderstanding of the provision’s effects. *D.R. Horton, Inc.*, 96 P.3d at 1162. Substantive  
21 unconscionability focuses on whether an agreement’s terms are one-sided or bilateral. *Id.* at  
22 1162–63.

23 ...

i. *The Agreement is Not Procedurally Unconscionable*

“An arbitration clause is procedurally unconscionable when a party has no ‘meaningful opportunity to agree to the clause terms either because of unequal bargaining power, as in an adhesion contract, or because the clause and its effects are not readily ascertainable upon a review of the contract.’” *Gonski v. Second Jud. Dist. Ct.*, 245 P.3d 1164, 1169 (Nev. 2010). To avoid procedural unconscionability, an arbitration provision must be conspicuous and put the signer on notice that they are giving up important legal rights. *Id.* at 1170. Misleading or complicated language can suggest procedural unconscionability. *Id.* at 1169. And a party’s ability to negotiate the terms of an agreement factors into a procedural-unconscionability review. *Id.* at 1162.

For example, in *Gonski*, the Nevada Supreme Court found an arbitration clause procedurally unconscionable because it was typed in normal-sized font and found on page 15 of an 18-page agreement “in the midst of identically formatted paragraphs, even though” other provisions were “called out through the use of all capital letters.” *Id.* at 1170. And although the signatories initialed the bottom of the page containing the arbitration provision, “nothing drew their attention to the importance of what those pages contained.” *Id.*

Mehretu argues that because the Agreement was presented at the end of the Personnel Code, along with its acknowledgment of receipt, and consisted mainly of large block text, the arbitration agreement and its effects were not readily ascertainable upon a review of the contract. ECF No. 13 at 4-5.

Here, the bulk of the language in the *Acknowledgement of Receipt and Arbitration Agreement* is dedicated to the terms and conditions of the arbitration agreement, while a mere four lines acknowledge receipt of the Personnel Code. *See generally* ECF No. 11-1. Although the arbitration paragraphs are typed in the same size and style font as the acknowledgement of receipt, the conclusion of the Agreement is not inconspicuous. In fact, it read in boldface capital letters:

1 I UNDERSTAND THAT BY VOLUNTARILY AGREEING TO THIS  
 2 BINDING ARBITRATION PROVISION, BOTH I AND THE DISTRICT  
 3 GIVE UP OUR RIGHTS TO TRIAL BY JURY OF ANY CLAIM I OR THE  
 4 DISTRICT MAY HAVE AGAINST EACH OTHER.

5 DO NOT SIGN UNTIL YOU HAVE READ THE ABOVE STATEMENT AND  
 6 ARBITRATION AGREEMENT.

7 ECF No. 11-1.

8 These are the only statements in the agreement that are written in all capital letters,  
 9 causing them to stand out from the other provisions. Mehretu's signature acknowledged he read  
 10 the statements and agreed to the binding arbitration of employment disputes. Moreover, as  
 11 noted by SNHD, the Agreement states that Mehretu acknowledges that he has "received a copy  
 12 of the Personnel Code and understand that it sets forth the terms and conditions of [his]  
 13 employment as well as rights, duties, responsibilities and obligations of employment with the  
 14 District. [He] understand and agree that it is [his] responsibility to read and familiarize myself  
 15 with the provisions of this manual and any and all subsequent revisions that shall be equally  
 16 binding as terms and conditions of employment," *id*, not that he was expected or required to read  
 17 the entirety of the Code before signing the Code.

18 Thus, Mehretu's agreement is distinguishable from the one in *Gonski* because: (1) the  
 19 arbitration provision stands out from the other terms of the agreement; (2) the agreement  
 20 contains explicit language detailing what rights he was giving up; and (3) both the form and  
 21 substance of the agreement demonstrate that the contract was not one of adhesion, but of  
 22 choice, and Mehretu freely elected arbitration. Accordingly, I do not find that this agreement is  
 23 procedurally unconscionable.

24 ii. *The Agreement is not Substantively Unconscionable*

Substantive unconscionability refers to an agreement's one-sidedness. *D.R. Horton, Inc.*, 96  
 P.3d at 1162–63. Mehretu argues that the function of this contract was not only to bind him to

1 arbitration, but it also served as a means in which to acknowledge that he had received a copy of  
2 Defendant's Personnel Code. ECF No. 13 at 5. The fact that he was voluntarily relinquishing  
3 his rights to seek relief from the Courts, as well as confirming that he had received Defendant's  
4 Personnel Code is not clear. *Id.*

5 Mehretu also argues that the agreement is substantively unconscionable because it may  
6 force an employee to bear some of the cost of mediation and arbitration. He contends there is no  
7 indication of which provider will conduct the arbitration and there is no indication of who will  
8 be responsible to pay for the fees associated with the arbitration process. *Id.*

9 Mehretu does not cite to a case or any other authority supporting his assertion that  
10 signing an arbitration agreement along with other onboarding requirements somehow voids or  
11 mitigates his agreement to arbitrate. There is no statutory language requiring that an arbitration  
12 agreement be a standalone document. Rather, NRS 597.995 states that "an agreement which  
13 includes a provision which requires a person to submit to arbitration any dispute arising  
14 between the parties to the agreement must include specific authorization for the provision  
15 which indicates that the person has affirmatively agreed to the provision." Nev. Rev. Stat. §  
16 597.995 (2013).

17 While this Court acknowledges the Agreement's silence regarding arbitration costs, that  
18 alone does not render the Agreement unenforceable. The Nevada Supreme Court held that [an]  
19 agreement was not unenforceable on the ground that the "risk" of prohibitive costs was "too  
20 speculative" to justify invalidation of the arbitration agreement. *Green Tree Financial Corp.-Ala. v.*  
21 *Randolph*, 531 U.S. 79, 91 (2000). Furthermore, the Court acknowledges that "an arbitration  
22 agreement's silence regarding potentially significant arbitration costs does not, alone, render the  
23 agreement enforceable," it explained that "the existence of large arbitration costs could preclude  
24 a litigant from effectively vindicating her rights in the arbitral forum." *D.R. Horton*, 96 P.3d at 1165



1 (quoting *Green Tree*, 531 U.S. at 90). Thus, when “a party seeks to invalidate an arbitration  
2 agreement on the ground that arbitration would be prohibitively expensive, that party bears the  
3 burden of showing the likelihood of incurring such costs.” *Green Tree*, 531 U.S. at 92. Mehretu has  
4 not met this burden. Instead he merely argues that Agreement’s silence regarding arbitration  
5 costs alone is sufficient for this Court to render the agreement unenforceable.

6 Ultimately, Mehretu offers no true support for his position that the Agreement’s terms  
7 are themselves one-sided. I therefore find that the agreement is not substantively  
8 unconscionable.

9 *iii. The Public Interest Does Not Require this Court to Refuse to Enforce the Agreement*

10 Mehretu maintains that compelling arbitration would effectively ensure that the public  
11 would never learn the outcome of this matter. ECF No. 13 at 6. SNHD argues that the underlying  
12 of the case before this Court is a private employment dispute between private parties and not a  
13 matter of significant public interest. The Court agrees that some disputes between private  
14 parties can be issues in the public interest, however, by his own admissions, the public is already  
15 aware of the allegations of improper practices “as there was severe public backlash.” ECF No. 1  
16 at ¶¶28-29, ECF No. 13 at 6. Taking all his arguments together, Mehretu has not shown that his  
17 case is one of rare or exceptional circumstance for which public-interest consideration requires  
18 the Court to override the arbitration agreement.

19 *b. The Agreement Encompasses the Dispute at Issue*

20 Having found that the arbitration agreement is valid, the second prong of the district  
21 court’s role under FAA is to determine whether the agreement encompasses the dispute at issue.  
22 *Chiron Corp.*, 207 F.3d at 1130. Neither party contends that the arbitration agreement does not  
23 encompass the disputes in the complaint. Mehretu’s complaint sets forth claims of unlawful  
24 workplace discrimination and retaliation based on race under Title VII of the Civil Rights Act of

1 1964. ECF No. 1. The Agreement specifically includes as arbitrable “any claims of discrimination  
2 and harassment, whether they be based on the Nevada Fair Employment Practices Act, Title VII  
3 of the Civil Rights Act of 1964, as amended, as well as all other state and federal laws or  
4 regulations...” ECF No. 11-1. Based on the plain text of the Agreement, the Court determines that  
5 the claims are encompassed by the *Arbitration Agreement*.

#### 6 IV. Conclusion

7 Finally, having determined that the Agreement is binding, and that Mehretu’s claims are  
8 arbitrable and, therefore, *must* be submitted to arbitration, the Court turns to the question of  
9 staying or dismissing Mehretu’s action. The Ninth Circuit has held that, “notwithstanding the  
10 language of § 3 [of the FAA], a district court may either stay the action or dismiss it outright  
11 when, as here, the court determines that all of the claims raised in the action are subject to  
12 arbitration.” *Johnmohammadi v. Bloomingdale’s, Inc.*, 755 F.3d 1072, 1073-74 (9th Cir. 2014). Having  
13 considered that both parties ask that I stay this action pending the outcome of the arbitration,  
14 the Court concludes that it is appropriate to grant the request to stay pending arbitration.

15 IT IS THEREFORE ORDERED that Defendant Southern Nevada Health District’s  
16 Motion to Compel Arbitration (ECF No. 11) is **GRANTED**.

17 THE COURT FURTHER ORDERS that the parties shall promptly submit this matter to  
18 binding arbitration in accordance with the Acknowledgment of Receipt and Arbitration  
19 Agreement (ECF No. 11-1); and that this matter shall henceforth proceed by arbitration.

20 IT IS FURTHER ORDERED that this case is STAYED pending the outcome of the  
21 binding arbitration proceedings.

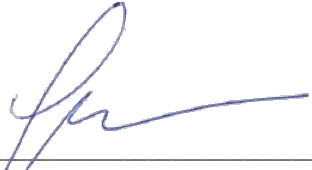
22 IT IS FURTHER ORDERED that the parties shall file a joint status report within thirty  
23 (30) days of the resolution of the binding arbitration proceedings. If more than 75 days passes  
24

1 before the arbitration takes place, the parties shall file a joint status report detailing when  
2 arbitration will occur.

3 All pretrial deadlines and hearing dates are hereby VACATED.

4 IT IS SO ORDERED.

5 DATED this August 12, 2022.

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Cristina D. Silva  
United States District Judge